HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 298 OF 2007

Between:

K. Venkata Krishna

… Appellant

And

Anisetty Venkateswara Rao (died) & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri Koka Raghava Rao, Senior Advocate assisted by Shri T. Srinivas

Counsel for respondent No.2 : Shri K. Gani Reddy

Counsel for respondent Nos.3 and 4 : Government Pleader for Cooperation

Counsel for respondent Nos. 5 and 6 : Shri C.V. R. Rudra Prasad for Shri S. Srinivas Reddy

April 10, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 11-12-2006 passed by the learned Single Judge whereby he allowed the writ petition filed by respondent No.2 – Anisetti Brahmananda Rao and annulled the sale of land measuring Ac.1-00 comprised in Revenue Survey No.80-1 situated in Village Jagannayakulapalem, Ramachandrapuram Mandal, East Godavari District.

Late Shri Anisetti Venkateswara Rao (father of respondent No.2) took loan (in two instalments) from Primary Agricultural Cooperative Society, Ramachandrapuram, which was subsequently merged with District Cooperative Central Bank Limited, Kakinada (for short, 'the bank'). He mortgaged immovable property as security for repayment of loan. Due to his failure to repay the loan, the bank initiated proceedings under the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'). The arbitrator to whom the matter was referred under Section 61 of the Act rendered awards in favour of the bank. Thereafter, the bank filed two applications under Rule 52 of the Andhra Pradesh Cooperative Societies Rules, 1964 (for short, 'the Rules') for realisation of the amounts specified in the arbitration awards. The same were registered as CEP No.204/1997-98 and CEP No.166/1999-2000. The competent authority issued two separate notices for sale of the mortgaged properties. For the land specified in the schedule appended to CEP No.204/1997-98, the date of sale was fixed as 10-3-2000 and the place of sale was specified as Draksharamam Branch of the bank. In relation to CEP No.166/1999-2000, the date of sale was fixed as 20-3-2000. However, without giving any prior notice, the date of sale in relation to second execution petition was preponed and the entire land was sold on 10-3-2000. The appellant gave the highest bid of Rs.1,26,000/- for Ac.1-00 of land. Respondent No.1 objected to the clubbing of sales and lodged written protest under Rule 52 (14) of the Rules. By an order dated 18-8-2000, respondent No.4 rejected the objection and confirmed the sale in favour of the appellant. Revision filed by respondent No.1 under Section 77 (1) of the Act read with Rule 52 (14) (vi) of the Rules was dismissed by Additional Registrar of Co-operative Societies, Hyderabad (respondent No.2 herein) vide his order dated 12-3-2001.

Shri Anisetti Venkateswara Rao (respondent No.1) challenged the sale of his property in Writ Petition No.11479 of 2001. In

paragraphs 3 to 5 of his affidavit, respondent No. 1 averred as under:

> "3. It is relevant to submit here I am the owner of the schedule of property Ac.6-96 cents which was shown in the schedule of sale notice, and by mortgaging the land I have taken loan from the 4th respondent-bank. For that the 4th respondent-bank has issued a sale notice mentioning that the petitioner is due to the exstent of Rs.50,976/- + interest and costs in case of default. The sale of property is fixed on 10-3-2000 at 11 A.M. at D.C.C. Bank, Branch at Draksharamam. In this connection it is not out of place to mention that there is also another CEP.166/99-2000 for which the sale is fixed on 22-3-2000. Accordingly, I have attended to the branch officer of 4th respondent at 10 AM and approached the 3rd respondent and tendered payment in CEP.No.204/97-98. The 3rd respondent made me to sit till 5 PM, and demanded the payment of Rs.25,000/- in respect of CEP 166/99-2000, which is nothing to do with the present sale auction of CEP.204/97-98. Even though I requested him to accept the amount in CEP.204/97-98, the 3rd respondent adamantly declined to accept payment and erroneously recorded the sale as if the auction is conducted after 6 PM on 10-3-2000.
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> 4. It is further submitted that the sale officer did not conduct any auction on 10-3-2000 at District Cooperative Bank at Draksharamam and he erroneously mixed-up the CEP.166/99-2000 with CEP.204/97-98 and shown to have conducted sale for realisation of the amount pending the two E.Ps. even though the sale is being fixed with CEP.166/99-2000 on 20-3-2000. It is relevant to submit here that the fixing of sale at the office of DHR is against the provisions of the A.P.C.S. rules and sale has to be vitiated and became invalid and as much as the procedure contemplated under Rule 52 & 63 has not been followed in conduct of sale. Hence, I am extracting the relevant rule of 53(2)(a) as follows:
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> > "The sale shall be held in the villages where the mortgaged properties are situated or at the nearest of the public resort. If the sale officer is of the opinion that the property is likely to sell to better advantage there."
>
> It is clear from the records that the schedule of property of CEP.166/99-2000 belongs to Jagannayakulapalem. Therefore, according to rule 53 (2)(a), the sale shall be fixed at

Jagannayakulapalem village.

5. It is relevant to submit here that the schedule of property proposed for auction is Ac.6-96 cents comprising of 6 items for realisation of an amount of Rs.50,976/- + further interest and costs, the total amount would be worked out to be Rs.70,000/- only.

S.No.	Survey No.	Extent
1.	61/2	Ac.0-03 cents
2.	80/1	2-42
3.	80/3	0-05
4.	83	3-26
5.	74/4	0-80
6.	8/4	0-40
		Ac.6-96 cents

Even as per the valuation obtained by the sale officer, the valuation of the property is Rs.1 lakh per acre. It is therefore evident that 0-80 cents in S.No.74/4 would be sufficient since the value of the property would be Rs.80,000/-. Instead of putting this bit to an auction the 2nd respondent put the sale of Ac.1-00 from out of Ac.2-42 cents in S.No.80/1. It is therefore unlawful and contravention of the provisions of Rule 52 which has resulted in heavy loss to the petitioner."

In paragraphs 4, 5, 6 and 8 of the counter-affidavit filed by him, Shri S.V. Satyanarayana (respondent No.3 in the writ petition) averred as under:

"4. I submit that though the auction date for CEP.204/99-2000 was fixed on 10-3-2000 and CEP.166/99-2000 on 22-3-2000, but vide letter dt.1-3-2000, the Secretary, Velampalem PACS requested this respondent to merge the present case along with CEP.No.204/99-2000 in view of the award No.1008/92-93 dated 22-6-1993. The said request was noted in column No.25(B) of part-II. I am herewith filing a copy of the proceedings in CEP.No.204/99-2000 along with the letter submitted by the Secretary, Vellampalem PACS as R1 and R2 and the same may be read as a part of this affidavit.

5. In reply to the averments made in paragraph 2 of the affidavit under reply it is true to say that the petitioner is a judgment debtor in CEP.No.204/99-2000, the sale of schedule property in CEP.No.204/99-2000 was fixed at the branch office

of District Co-operative Central Bank, Draksharamam, on 10-3-2000, a notice was served on the petitioner on 21-2-2000, Form No.8 notice dated 22-2-2000 was affixed in the office of Mandal Revenue Office, Ramchandrapuram and Form and Form No.9 notice was affixed in the office of Deputy Registrar of Co-operative Societies, Rajahmundry. On 8-3-2000, 9-3-2000 and
10-3-2000, the date of auction and property to auctioned was advertised by way of tom tom in Jagannayakulapalem village. Apart from the same, the Sub-Registrar, Draksharamam valued the schedule property and issued a valuation certificate on 9-3-2000, fixing the value of the auctioned land at Rs.1 lakh per acre. The 4th respondent who is the decree holder also gave a valuation certificate on 10-3-2000 showing appropriate value as Rs.1,50,000/- per acre. The Sarpanch of Jagannayakulapalem village valued the land at Rs.1,25,000/- per acre and issued a certificate to that effect.

6. I submit that the amount due from the petitioner as on 10-3-2000 in CEP.No.204/99-2000 along with interest is Rs.77,523/- and on CEP.No.166/99-2000 Rs.24,890/- + Rs.7,688/- towards poundage charges. The upset price was fixed at Rs.1.25 lakhs per acre. Therefore, petitioner cannot contend that he would have got more money than what was received in the auction. The auction was held on 10-3-2000 at the branch office of the 4th respondent bank, three members participated in the auction proceedings and paid a sum of Rs.2,000/- towards EMD. The bid amount was fixed at Rs.1.50 lakhs, the 5th respondent became the highest bidder at Rs.1,26,000/- and the bid was knocked down in his favour.

8. I submit that the averments made in paragraph 3 of the affidavit under reply are not true and correct. It is true to say that the petitioner obtained loan from the erstwhile PAD Bank, Ramachandrapuram in the year 1987, but it is not true to say that this respondent made him to sit till 5 PM and demanded the payment of Rs.25,000/- in respect of CEP.No.166/99-2000. This respondent has no personal interest in the case, as a responsible officer I discharged my duties with a view to recover the debt due from the petitioner to the Decree holder/Society and the petitioner cannot attribute malafides for his lapses in paying debt taken as long back as in the year

1987. Having failed before 2 forums, the petitioner approached this Hon'ble Court with untenable grounds. This respondent is always ready and willing to accept the money payable by a debtor and at no point of time refused to accept payments which will improve the financial conduction of respective banks. As such the said allegations made by the petitioner in Para 3 of the affidavit under reply are denied in Toto."

Respondent No.5 in the writ petition (the appellant herein) filed separate counter-affidavit stating therein that no irregularity was committed in the sale of the property mortgaged by the writ petitioner and the highest bid given by him was rightly accepted by the Deputy Registrar concerned. He averred that possession of the property had been delivered to him and the petitioner was trying to forcibly take possession.

During the pendency of the writ petition, Anisetti Venkateswara Rao died and by an order dated 8-4-2005 in WPMP No.12854 of 2004, respondent No.2 was brought on record as his legal representative.

The learned Single Judge allowed the writ petition and quashed orders dated 18-8-2000 and 12-3-2001 passed by respondent Nos.4 and 3 respectively. He held that clubbing of the sale of property under CEP No.166/1999-2000 with the sale of property under CEP No.204/1997-98 was arbitrary and vitiated due to violation of the rules of natural justice because no notice was given to the petitioner before clubbing the sales; that the bid of Rs.1,26,000/- given by the appellant was on lower side and further that the concerned authority had acted arbitrarily by showing Ac.2-42 cts. of land in the notices despite the fact that only Ac.1-00 land was actually put to auction. The learned Single Judge also took note of the fact that in compliance of the conditional order passed by this Court on 13-6-2001, the petitioner had deposited the entire decretal amount and directed that no further action is required to be taken by the

respondents.

Shri Koka Raghava Rao, learned Senior Counsel argued that the reasons assigned by the learned Single Judge for nullifying the sale of Ac.1-00 land belonging to respondent No.1 are legally untenable and the order under challenge is liable to be set aside because clubbing of the sales did not cause any prejudice to respondent No.1. He further argued that the learned Single Judge committed a serious error by quashing orders dated 18-8-2000 and 12-3-2001 ignoring the fact that three persons had participated in the sale conducted on 10-3-2000.

Shri K. Gani Reddy supported the order under challenge and submitted that the appeal should be dismissed because his client i.e. respondent No.2 has already deposited the amount due to the bank.

Shri C.V.R. Rudra Prasad, learned counsel for the bank fairly conceded that in compliance of the interim order passed by this Court, respondent No.2 deposited the entire amount due to his client.

We have given serious thought to the entire matter. Sections 70 to 74, which find place in Chapter X of the Act, provide for execution of decisions, decrees and orders. The procedure to be followed for execution of decisions, decrees or orders is enshrined in Rule 52 of the Rules. Sub-rules (3), (4) and (11)(a) to (e) of Rule 52, which have bearing on the decision of this appeal, read as under:

> **52. Procedure in execution of decrees, decisions or orders**
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> … … …
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> (3) The application shall be made in Form D and shall be singed by the decree-holder. The decree-holder may indicate whether he wishes to proceed in the first instance, against the immovable property mortgaged to the decree-holder or other immovable property or to secure the attachment of movable property. On receipt of application, the Registrar of the district shall verify the correctness and genuineness of the particulars set forth in the application with the records, if any, in his office, and prepare a demand notice in writing in duplicate in the form

specified, by him in this behalf, setting forth the name of the defaulter, the amount due and forward it to a sale officer. If the defaulter resides or the property is situated outside the jurisdiction of the Registrar of the district to whom the application is made, such Registrar shall forward the application and the demand notice to the Registrar of the district in which the defaulter resides or the property is situated.

(4) Unless the decree-holder has expressed a desire that proceedings should be taken in a particular order as laid down in sub-rule (3), execution shall ordinarily be taken in the following manner:-

i) Movable property of the defaulter shall be first proceeded against, but this shall not preclude the immovable property being proceeded against simultaneously in case of necessity;

ii) If there is no immovable property or if the sale proceeds of the movable property, or properties attached and sold are insufficient to meet in full the demand of the decree-holder, the immovable property mortgaged to the decree-holder or other immovable property belonging to the defaulter may be proceeded against.

… … …

(11) In respect of an attachment and sale, or sale without attachment of immovable property, the following procedure shall be followed:-

a) The application made under sub-rule (3) shall contain such description of immovable property to be proceeded against, as is sufficient for its identification and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the specification of such boundaries or numbers and the specification of the defaulter's share of interest in such property to the best of the decree-holder and so far he has been able to ascertain it;

b) The demand notice issued by the Registrar under sub-rule (3) shall contain the name of the defaulter, the amount due including the expenses, if any and the batta to be paid to the person who shall serve the demand notice; the time allowed for payment and in case of non-

payment, the particulars of the properties to be attached and to be sold without attachment, as the case may be.

After receiving the demand notice, the sale officer shall serve or cause to be served a copy of the demand notice upon the defaulter or upon some adult male member of his family at his usual place of residence, or upon his authorised agent, or if such personal service is not possible, shall affix a copy thereof on some conspicuous part of his last known residence or on some conspicuous part of the immovable property about to be attached and sold or sold without attachment, as the case may be:

Provided that where the Registrar is satisfied that a defaulter with intent to defeat or delay the execution proceedings against him is about to dispose of the whole or any part of the property, the demand notice issued by the Registrar under sub-rule (3), shall not allow any time to the defaulter for payment of the amount due by him and the property of the defaulter shall be attached forthwith.

(c) If the defaulter fails to pay the amount specified in the demand notice within the time allowed, the sale officer shall proceed to attach and sell or sell without attachment, as the case may be, the immovable property noted in the application for execution;

(d) Where attachment is required before sale, the sale officer shall if possible cause a notice of attachment to be served on the defaulter personally. Where personal service is not possible, the notice shall be affixed in some conspicuous part of the defaulter's last known residence, if any. The fact of attachment shall also be proclaimed by beat of drum at some place on or adjacent to such property and at such other place or places as the Registrar of district may consider necessary to give due publicity to the sale. The attachment notice shall set-forth that unless the amount due with interest and expenses be paid within the date therein mentioned the property will be brought to sale. A copy shall be sent to the decree-holder. Where the sale officer so directs the attachment shall also be notified by public proclamation in the district gazette;

(e) Proclamation of sale shall be published by affixing

a notice at the office of the Registrar of the district and taluk office at least thirty days before the date fixed for the sale and also beat of drum in the village on two consecutive days previous to the date of sale and on the day of sale. Such proclamation shall, where attachment is required before sale be made after the attachment has been affected. Notice shall also be given to the decree-holder and the defaulter. The proclamation shall state the time and place of sale and specify as fairly and accurately as possible.

i) the property to be sold;

ii) any encumbrance to which the property is liable;

iii) the amount for the recovery of which sale is ordered; and

iv) every other matter which the sale officer considers material for a purchaser to know in order to judge the nature and value of the property."

A reading of the above reproduced rule makes it clear that an application made in sub-rule (3) of Rule 52 must contain description of the immovable property to be proceeded against. The demand notice issued by the Registrar must also contain the particulars of the defaulter, the amount due and the properties to be attached and to be sold without attachment. Sub-clause (e) of sub-rule (11) of Rule 52 lays down that the proclamation of sale shall be published at least 30 days before the date fixed. The time and place of the sale is also required to be specified.

The object underlying the rules is to ensure that proper notice is given to the defaulters and prospective purchasers so as to enable the former to arrange for payment of money and to the latter to effectively participate in the sale proceedings. What was done in the present case by respondent Nos.4 and 5 can appropriately be termed as a poor apology for compliance of the mandate of Rule 52 (3) and (11) of the Rules. After fixing two different dates for sale of the property in relation to two different execution petitions, respondent No.4, without giving any notice to respondent No.2 and the prospective bidders/purchasers, preponed the sale proposed in

relation to the second execution petition. This prevented respondent No.2 from taking steps to deposit the entire amount due to the bank. Not only this, prospective buyers were kept in dark about the true status of the property to be sold and, as a result, the sale of Ac.1-00 of land fetched much less price.

In view of the above, we have no hesitation to record our approval of the reasons assigned by the learned Single Judge for quashing the sale of Ac.1-00 land belonging to late Shri Anisetti Venkateswara Rao (father of respondent No.2) and orders dated 18-8-2000 and 12-3-2001 passed by respondent Nos.4 and 3 respectively.

In the result, the appeal is dismissed. However, respondent Nos.5 and 6 are directed to refund the amount deposited by the appellant within a period of two weeks from the date of receipt of a copy of this order.

As a sequel to dismissal of the appeal, WAMP No.569 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

April 10, 2007

C.V. NAGARJUNA REDDY, J

svs